IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR
&
THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 13TH OCTOBER 2006 / 21ST ASWINA 1928

ST.Rev..No. 29 of 2006()

TA.364/2003 of S.T.A.TRIBUNAL,ADDL.BENCH,KZD.
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REVISION PETITIONER: ASSESSEE/APPELLANT:

M/S. M.DO'S INFO SYSTEMS,
ZAM ZAM BUILDINGS, CALICUT, REPRESENTED BY ITS
POWER OF ATTORNEY HOLDER, SMT.TESSY MOOKKEN.

BY ADV. SRI.E.P.GOVINDAN

RESPONDENTS: REVENUE/RESPONDENT:

STATE OF KERALA,
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,
GOVT. SECRETARIAT, TRIVANDRUM.

BY GOVERNMENT PLEADER SRI.GEORGE KUTTY MATHEW

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 13/10/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR & K.M.JOSEPH, JJ.

S.T.REVISION NO.29 OF 2006

Dated this the 13th day of October, 2006

J U D G M E N T

Ramachandran Nair, J

Heard counsel for the petitioner and the Government Pleader.

2. Questions raised pertain to disallowance of unfructified purchases and rejection of accounts both resulting in addition to the sales turn over. So far as the addition to the turnover based on two inter-state purchases which were not accounted by the petitioner, we do not find any ground to interfere with the Tribunal's order because a mere letter from the supplier produced by the petitioner was rightly rejected by the Tribunal as inadequate evidence to show that the purchases got cancelled. Any such transaction should be proved with support of evidence and documents like a debit note issued by the supplier cancelling the sale or a credit note towards proof of return of goods and in any case, it should be accompanied by proper documents proving the transportation of goods back to the seller. Admittedly, these documents were not available and therefore

Tribunal sustained disallowance after finding that the letter produced from seller is not sufficient to establish the case. We do not find any fault with this finding of the Tribunal. So far as the addition to the turn over is concerned, we find the Tribunal has sustained the addition because petitioner admittedly committed offence of non maintenance of books and paid compounding fee of Rs.3,000/- Therefore, this ground is also rejected.

3. The last issue raised is with regard to rate of tax on computer. The rate at the relevant time under item 56 of the First Schedule is 4%. The issue cropped up because petitioner did not file reply to pre-assessment notice. First appellate authority and the Tribunal did not take the turn over as pertaining to sale of computer but assumed that the turnover pertains to sale of computer peripherals and monitors. However, we find from the assessment order that the officer has accepted petitioners turnover over Rs.7,89,704/- as first sale turn over of computer. Petitioner not being a manufacturer could have purchased computer from outside State and if so there will be evidence of such purchases against issue of C forms. In view of the statement in the assessment order that the turnover Rs.7,89,704/-

represents sales turnover of computer, we feel the assessment at a higher rate treating the items sold as computer peripheral is not justified. We therefore, set aside the order of the Tribunal and appellate authority and direct the officer to reconsider the first sales turn over of computer accounted by the petitioner and, if the turnover so claimed is proved to be turnover of computers, he will apply the rate applicable to computer under the schedule to the notification above referred or under the relevant notification in force during the year.

S.T.Revision is allowed to the above extent.

C.N.RAMACHANDRAN NAIR, JUDGE

K.M.JOSEPH, JUDGE

Rp